

designed to accommodate both current demand and projected demand of competing carriers for access to OSS functions.

138. Under the second part of the inquiry, the Commission will examine operational evidence to determine whether the OSS functions provided by the BOC to competing carriers are actually handling current demand and will be able to handle reasonably foreseeable demand volumes. We agree with the Department of Justice that the most probative evidence that OSS functions are operationally ready is actual commercial usage.<sup>338</sup> Carrier-to-carrier testing, independent third-party testing, and internal testing also can provide valuable evidence pertaining to operational readiness, but are less reliable indicators of actual performance than commercial usage.<sup>339</sup> We recognize that, although a BOC has a duty to provide items on the checklist to competing carriers, this duty does not include the duty to ensure that competing carriers are currently using each and every OSS function.<sup>340</sup> As long as the BOC can demonstrate that the reason competing carriers are not currently using a particular OSS function is because of the competing carriers' business decisions, rather than the lack of the practical availability of the necessary OSS functions, the Commission may consider carrier-to-carrier testing, independent third-party testing, and internal testing, without commercial usage, as evidence of commercial readiness.

139. For those OSS functions provided to competing carriers that are analogous to OSS functions that a BOC provides to itself in connection with retail service offerings, the BOC must provide access to competing carriers that is equal to the level of access that the BOC provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness. We conclude that equivalent access, as required by the Act and our rules, must be construed broadly to include comparisons of analogous functions between competing carriers and the BOC, even if the actual mechanism used to perform the function is different for competing carriers than for the BOC's retail operations. We reject Ameritech's contention that equivalent access is not the appropriate standard for measuring access to certain OSS functions because competing carriers obtain access to these functions through a gateway, whereas Ameritech obtains access to them directly.<sup>341</sup> Ameritech's approach would allow an

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functions, a BOC must develop some alternative so that the BOC is still able to provide nondiscriminatory access to OSS functions.

<sup>338</sup> See Department of Justice SBC Oklahoma Evaluation at 29-30.

<sup>339</sup> With regard to third-party evaluation, see *infra* Section VI.C.7.

<sup>340</sup> See discussion of the meaning of "provide" *supra* Section VI.A.

<sup>341</sup> For example, as part of pre-ordering function, both Ameritech and competing carriers may access customer service records (CSR). It is the activity of accessing a CSR that is analogous and, therefore, equivalent access is the appropriate standard for measuring nondiscriminatory access, even though competing carriers access CSRs via a gateway.

incumbent LEC to avoid its duty to provide equivalent access by claiming that the form of access it has adopted does not permit a parity comparison.<sup>342</sup> As discussed above, Ameritech's approach would render the nondiscriminatory access standard meaningless, given that the Commission has not required that incumbent LECs follow a prescribed method of providing access to OSS functions.<sup>343</sup>

140. We find that OSS functions associated with pre-ordering, ordering and provisioning for resale services, and repair and maintenance for both resale services and unbundled network elements all have retail analogues. Similarly, because measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, equivalent access is the standard required by section 271 and section 251 of the Act for this billing subfunction as well.

141. For those OSS functions that have no retail analogue, such as the ordering and provisioning of unbundled network elements,<sup>344</sup> the BOC must demonstrate that the access it provides to competing carriers satisfies its duty of nondiscrimination because it offers an efficient competitor a meaningful opportunity to compete.<sup>345</sup> In examining whether the quality of access provided to such functions "provides an efficient competitor a meaningful opportunity to compete," we will, in the first instance, examine whether specific performance standards exist for those functions.<sup>346</sup> In particular, we will consider whether appropriate standards for measuring the performance of particular OSS functions have been adopted by the relevant state commission or agreed upon by the parties in an interconnection agreement or during the implementation of such an agreement. As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted

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<sup>342</sup> The terms "equivalent access" and "parity of access" are used synonymously in this section.

<sup>343</sup> See discussion regarding scope of OSS requirement *supra* para. 135.

<sup>344</sup> Because of the lack of evidence in this record regarding the ordering and provisioning of combinations of network elements, as noted *infra* Section VI.C.5.b., we make no finding on whether ordering and provisioning combinations of network elements have a retail analogue.

<sup>345</sup> See *Local Competition Order*, 11 FCC Rcd at 15660; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742-43. We also recognize that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is still nondiscriminatory within the meaning of the statute. We need not reach this issue in rendering our decision on to this application.

<sup>346</sup> We note that the Commission has initiated a proceeding in response to a petition filed by LCI requesting the Commission to adopt performance standards and reporting requirements for OSS functions provided by incumbent LECs to competing carriers. See *Comments Requested on Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems*, Public Notice, DA 97-1211 (rel. June 10, 1997) (*Performance Standards Public Notice*).

by the BOC outside of its interconnection agreement.<sup>347</sup> Win-backs of customers serviced by unbundled network elements might provide sufficient data with which to develop an appropriate measurement of equivalent access when there has been enough churn in the marketplace.<sup>348</sup> In addition, the Commission determined in the *Local Competition Order* that, for the provisioning of unbundled local switching that only involves software changes, customers should be changed over in the same interval as LECs currently change over end users between interexchange carriers.<sup>349</sup>

142. Because section 271 of the Act requires BOCs to comply with the statutory standard of providing nondiscriminatory access to OSS functions, evidence showing that a BOC is satisfying the performance standards contained in its interconnection agreements does not necessarily demonstrate compliance with the statutory standard. If a BOC chooses to rely solely on compliance with performance standards required by an interconnection agreement, the Commission must also find that those performance standards embody the statutorily-mandated nondiscrimination standard. Regardless of the existence of contractually-based performance standards, however, the Commission presumes, as noted above, that a number of the OSS functions provided to competing carriers have an analogue associated with a BOC's retail operations and, therefore, equivalent access, as measured by those analogues, would be the standard of performance required by section 271 for those OSS functions.<sup>350</sup>

143. In sum, our requirements with respect to access to OSS functions are readily achievable. We require, simply, that the BOC provide the same access to competing carriers that it provides to itself.

#### 4. Evidence in the Record

144. Ameritech represents that it "has developed, tested, and implemented access to its OSS functions and other support processes which are used in providing checklist items."<sup>351</sup> With respect to the five broad categories of OSS functions -- pre-ordering, ordering,

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<sup>347</sup> Ameritech itself notes the limitations of unilaterally-adopted performance standards in disputing the merits of performance measures proposed by the Local Competitors User Group (LCUG). "[T]he LCUG proposals were unilaterally arrived at by interexchange carriers without any input from Ameritech, any other RBOC, or any local exchange carrier." Ameritech Reply Comments, Vol. 5R.18, Mickens Reply Aff. at 31.

<sup>348</sup> For example, we would be concerned if it is taking a BOC an average of five days to provision unbundled loops for competing carriers, while it is taking one day to switch customers, previously serviced by competing carriers using unbundled loops (i.e., win-backs), back to Ameritech's retail service.

<sup>349</sup> See *Local Competition Order*, 11 FCC Rcd at 15711-12.

<sup>350</sup> See *supra* para. 139.

<sup>351</sup> Ameritech Application at 21.

provisioning, maintenance and repair, and billing -- Ameritech claims that it is providing competing carriers with "equivalent access to information, elements, products and services that Ameritech provides to itself, its affiliates, and other carriers . . . ." <sup>352</sup> Ameritech also claims that the interfaces it has deployed to allow competing carriers to obtain access to OSS functions comply with existing industry standards and guidelines. <sup>353</sup>

145. Ameritech further contends that: (1) it has made available the technical and business information that carriers can use to access Ameritech's interfaces; (2) all of the interfaces are operationally ready, and many are being used on a commercial basis; and (3) there is sufficient electronic and manual capacity to meet expected future usage volumes. <sup>354</sup> Ameritech claims that it has provided competing carriers with detailed specifications that contain the technical information necessary for other carriers to be able to build systems that can communicate with Ameritech's interfaces. <sup>355</sup> Ameritech also contends that it maintains close and regular contact with competing carriers in order to assure that those carriers understand how Ameritech's OSS interfaces and processes operate. <sup>356</sup>

146. Ameritech asserts that "operational readiness is properly defined as whether [its OSS] interfaces have undergone sufficient testing or use to provide reasonable assurance that requesting carriers can obtain timely access to the OSS functions needed to enter the marketplace and successfully service end users at anticipated demand levels." <sup>357</sup> Ameritech claims that its OSS interfaces work properly, as demonstrated by the results of internal testing, carrier-to-carrier testing, and/or actual commercial usage. <sup>358</sup> Ameritech emphasizes that systems experts from Andersen Consulting have independently reviewed the results from both testing and actual use to conclude that Ameritech's interfaces are operationally ready. <sup>359</sup>

147. Commenters generally dispute Ameritech's assessment that all of its OSS functions are operationally ready. Several parties complain about the delay in receiving Ameritech's OSS specifications and the inadequacy of the information provided to competing

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<sup>352</sup> *Id.* at 22.

<sup>353</sup> *Id.* at 23.

<sup>354</sup> *Id.* at 24.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.* at 25.

<sup>357</sup> *Id.* at 28.

<sup>358</sup> *Id.* at 25.

<sup>359</sup> *Id.* at 25-26.

carriers in order to use Ameritech's OSS interfaces.<sup>360</sup> MCI also complains about Ameritech's use of proprietary and non-industry standard interfaces for OSS access.<sup>361</sup> Phone Michigan asserts that Ameritech's interfaces for OSS access are complicated and expensive, and therefore unworkable for small businesses.<sup>362</sup> Several parties also contend that Ameritech's systems cannot be considered operational until they are used successfully in a commercial setting and, therefore, internal and carrier-to-carrier testing is not sufficient.<sup>363</sup>

148. Commenters, in general, assert that Ameritech's provision of access to its operations support systems for requesting carriers is not equivalent to the OSS access it provides to itself,<sup>364</sup> and object to the amount of manual intervention that is involved in processing many of the orders that requesting carriers submit via the electronic interfaces.<sup>365</sup> AT&T, for example, contends that there are two fundamental defects with Ameritech's operations support systems: (1) Ameritech has not performed the systems design, development, and implementation work to ensure that, after a competing carrier's order moves through the interface, it will be processed properly by Ameritech's legacy systems; and (2) the access Ameritech provides to its operations support systems is overly dependent on manual processing, which is labor intensive, time consuming, costly, error prone, and inconsistent.<sup>366</sup>

149. The Communications Workers of America (CWA) asserts that, "[a]t this time, backlogs in service orders, very low service levels, and billing errors indicate that CLECs do not receive OSS service at parity with Ameritech's own customers, and that [m]ore time is necessary to improve the computer systems and to hire and to train sufficient numbers of employees to handle the growing volume of orders."<sup>367</sup> The CWA contends that Ameritech is experiencing a number of problems with its electronic interfaces, causing Ameritech to process manually many of the orders placed by competing carriers.<sup>368</sup> The CWA argues that,

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<sup>360</sup> AT&T Comments at 21; Sprint Comments, Reeves Aff. at 15.

<sup>361</sup> MCI Comments at 22; Sprint Comments, Reeves Aff. at 16.

<sup>362</sup> Phone Michigan Comments at 7; TRA Comments at 32.

<sup>363</sup> CompTel Comments at 23-24; LCI Comments at 17; TCG Comments at 12-13; MFS WorldCom Comments at 35.

<sup>364</sup> CompTel Comments at 24; MCI Comments at 17; Michigan Consumer Federation at 3.

<sup>365</sup> Brooks Fiber Comments at 12-13; AT&T Comments at 24; LCI Comments at 17.

<sup>366</sup> AT&T Comments, Vol. V.F, Connolly Aff. at 8-9.

<sup>367</sup> CWA Reply Comments at 3.

<sup>368</sup> *Id.* at 10.

as a result, many orders have been backlogged and have not been processed by the expected due date.<sup>369</sup> In addition, the CWA asserts that the wholesale service center established by Ameritech to service competing carriers is understaffed and inadequately staffed by a large number of new hires and temporary contract employees.<sup>370</sup> Moreover, the CWA contends that the service representatives assigned to the service center receive insufficient training in comparison to those service representatives who work for Ameritech's retail operations.<sup>371</sup>

150. Other commenters contend that Ameritech's operations support systems do not have sufficient capacity to process efficiently orders submitted by competing carriers, and that the access Ameritech is providing to OSS functions is not actually meeting the performance standards Ameritech claims to be satisfying.<sup>372</sup> Several parties assert that Ameritech's OSS systems are failing, and not meeting the expectations of competing carriers.<sup>373</sup> Parties complain about recurring problems such as inconsistent ordering results, late-delivered bills, double-billing of new customers of competing carriers, and high order rejection rates.<sup>374</sup> Other parties contend that Ameritech has not deployed adequate OSS functions for the ordering, provisioning, and billing of combinations of unbundled network elements.<sup>375</sup> Sprint contends that Ameritech appears to have devoted its resources to supporting resale services and not unbundled network elements.<sup>376</sup> Finally, many parties contend that Ameritech does not have adequate performance measures in place to allow Ameritech to demonstrate that it is providing nondiscriminatory access.<sup>377</sup>

151. In its reply, Ameritech submits new OSS-related performance data (*i.e.*, data tracking OSS performance after May 21st), and states that it is now committed to reporting its

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<sup>369</sup> *Id.* at 11-14.

<sup>370</sup> *Id.* at 16-18.

<sup>371</sup> *Id.* The CWA contends that service representatives who work in the wholesale service center receive only two days of training before working with customers, in comparison to the eight weeks of training received by service representatives who work for Ameritech's retail operations. *Id.* at 17.

<sup>372</sup> Brooks Fiber Comments at 12-13; Sprint Comments, Reeves Aff. at 4; MCI Comments at 17.

<sup>373</sup> CompTel Comments at 24; LCI Comments at 18; Michigan Consumer Federation Comments at 3; Time Warner Comments at 11; TCG Comments at 12.

<sup>374</sup> CompTel Comments at 26; AT&T Comments at 22.

<sup>375</sup> *See, e.g.*, AT&T Comments at 22-23; MCI Comments, Exh. D, King Aff. at 56.

<sup>376</sup> Sprint Comments, Reeves Aff. at 15.

<sup>377</sup> *E.g.*, Brooks Fiber Comments at 12-13; AT&T Comments at 26-27; CompTel Comments at 23; LCI Comments at 18.

performance on a number of the measures requested by the Department of Justice and the Michigan Commission.<sup>378</sup> Ameritech also claims that it has undertaken a number of remedial measures to resolve recurring problems with certain of its operations support systems.<sup>379</sup> In addition, Ameritech has made a number of new commitments to provide additional information and analysis upon request.<sup>380</sup> Finally, Ameritech relies heavily on the proposed order issued by an Illinois Commerce Commission (Illinois Commission) hearing examiner on June 20, 1997, which concluded that Ameritech's operations support systems are available and operational.<sup>381</sup>

152. Before examining the specific concerns we have with Ameritech's OSS showing, we emphasize again that we judge Ameritech's checklist compliance based on the evidence submitted in its application.<sup>382</sup> Given the statutory time constraints, it is unacceptable for Ameritech to present new evidence and make new commitments at a point more than half-way through the 90-day statutory review period.<sup>383</sup> It also is not acceptable for Ameritech to claim on reply that it has resolved a number of OSS-related problems that were recurring problems at the time of, or prior to, the filing of its application.<sup>384</sup>

153. We recognize that the development of OSS functions is not a static process, and we encourage and expect Ameritech continually to make improvements to its operations support systems, even after it has filed a section 271 application. There is, however, a fundamental difference between making improvements to the OSS access that, at the time of the application, meets the nondiscriminatory requirement, and taking post-filing remedial measures to try to bring the OSS access into compliance during the pendency of the application. The record in this case shows that at least some of the post-filing actions

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<sup>378</sup> See, e.g., Ameritech Reply Comments at 5-10, and Vol. 5R.7, Gates and Thomas Reply Aff. at 12-13.

<sup>379</sup> See, e.g., Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 28-30, and Vol. 5R.18, Mickens Reply Aff. at 48.

<sup>380</sup> See Ameritech Reply Comments, Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 17-27.

<sup>381</sup> See, e.g., Ameritech Reply Comments at 6-9, and Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 6-9.

<sup>382</sup> See discussion regarding the weight given to new evidence *supra* Section IV.B..

<sup>383</sup> See AT&T Motion to Strike at 5-8 and Exhibit A (Portions of Ameritech Reply Containing Improper Data, Documents or Events); Joint Motion to Strike at 5-8. See, e.g., Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 12-15, 20-21, and Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 4, 15-17, 23-27.

<sup>384</sup> We also note that Ameritech presents little or no evidentiary substantiation to support many of these claims.

Ameritech has taken likely fall under this latter category.<sup>385</sup> By filing new information on reply and making new commitments on reply that go beyond supporting the arguments made in its original application, Ameritech in effect seeks to supplement its original case. As we made clear in our *December 6th Public Notice* regarding section 271 applications, and subsequently emphasized in our *Ameritech February 7th Order*, "[w]e expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon."<sup>386</sup>

154. Accordingly, in our analysis in this Order of the adequacy of Ameritech's OSS, we scrutinize carefully the factual information that post-dates the filing of the application, submitted by Ameritech on reply, to determine whether it is directly responsive to arguments or factual information submitted by commenters.<sup>387</sup> To the extent Ameritech's submission is not directly responsive, we will give it no weight. Any information filed on reply must not go beyond the time-frame covered by the information submitted by commenting parties and in any event must not post-date the filing of their comments.<sup>388</sup> Similarly, we do not consider any new commitments made by Ameritech or remedial measures taken by Ameritech after May 21, 1997, the date Ameritech filed its application, in evaluating whether Ameritech has demonstrated it provides nondiscriminatory access to its OSS.

155. Finally, we note that Ameritech's reliance in its reply on the Illinois Commerce Commission hearing examiner's proposed order issued on June 20, 1997 is now irrelevant. Subsequent to the proposed order issued by the hearing examiner on June 20, 1997, the hearing examiner issued a further revised proposed order on August 4, 1997. In the August 4th proposed order, the hearing examiner revises the findings made with regard to OSS and concludes that "more time is needed before [the Illinois Commission] can find that OSS is

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<sup>385</sup> See, e.g., AT&T Motion to Strike at 5-8 and Exhibit A (Portions of Ameritech Reply Containing Improper Data, Documents or Events).

<sup>386</sup> *December 6th Public Notice* at 2; *Ameritech February 7th Order*, 12 FCC Rcd at 3309 ("Because of the strict 90-day statutory review period, the section 271 review process is keenly dependent on . . . an applicant's submission of a complete application at the commencement of a section 271 proceeding.").

<sup>387</sup> Of the new evidence submitted by Ameritech in its reply comments, we find that the performance data, jointly submitted by Ameritech and AT&T to the Department of Justice on June 18, 1997, is directly responsive to contentions made by AT&T in its comments. The data tracks Ameritech's OSS performance for AT&T resale orders during April and May, an issue that AT&T addressed in its comments. Moreover, consideration of this data should not be prejudicial to any party, as the data has been jointly verified and reworked by both Ameritech and AT&T. See Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8. In the future, however, Ameritech and other BOCs should endeavor to reach consensus on performance measures with other parties prior to filing a section 271 application to allow the Commission and other parties sufficient time during the limited 90-day review period to scrutinize fully such data.

<sup>388</sup> See *supra* Section IV.B.1.



being provided at parity."<sup>389</sup> The hearing examiner's August 4th proposed order also finds that "[a]t this point in time, the record does not support a finding that OSS will function as expected without serious problems" and that "the record does not establish that Ameritech can handle increases in demand without serious delays."<sup>390</sup> Therefore, because the conclusions in the hearing examiner's June 20th proposed order regarding Ameritech's OSS have been revised, Ameritech reliance in its reply on the June 20th proposed order to support its claim that it provides nondiscriminatory access to OSS functions has been rendered moot.

156. As a general matter, we acknowledge that any determinations regarding OSS made by state commissions in the Ameritech region may be relevant to our inquiry in this application because Ameritech provides access to OSS functions on a region-wide basis from a single point of contact.<sup>391</sup> We note that the Illinois Commission hearing examiner's August 4th proposed order is not a final order as it has not been adopted by the Illinois Commerce Commission, and therefore, although it provides evidence relevant to our inquiry regarding the readiness of Ameritech's OSS for Michigan, it does not carry the same weight as a final order or decision issued by a state commission.

## 5. Analysis of Ameritech's Provision of Access to OSS Functions

### a. Introduction

157. Like the Department of Justice, we recognize that Ameritech has undertaken numerous measures to construct the interfaces, both electronic and manual, necessary to provide OSS functions to competing carriers.<sup>392</sup> In general, as problems or complications have appeared, Ameritech has sought to implement solutions in an expeditious manner.<sup>393</sup> Moreover, Ameritech has attempted to ensure that its systems have undergone some form of testing, whether internal, carrier-to-carrier, or independent third party, in order to determine

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<sup>389</sup> Illinois Commerce Commission, *Order*, Docket 96-0404 at 44 (August 4, 1997). In the June 20th proposed order the hearing examiner concluded that "[t]he record indicates that Ameritech's OSS is provided to competitors at a quality level that is within reasonable parity of the quality level that it provides to itself." Illinois Commerce Commission, *Hearing Examiner's Revised Second Proposed Order*, Docket 96-0404 at 51 (June 20, 1997).

<sup>390</sup> Illinois Commerce Commission, *Order*, Docket 96-0404 at 43 (August 4, 1997).

<sup>391</sup> Section 271 of the Act, however, specifically requires us to consider only the findings of the Michigan Commission for this application. 47 U.S.C. § 271(d)(2)(B).

<sup>392</sup> See Department of Justice Evaluation, Appendix A at 4.

<sup>393</sup> *Id.*

the readiness of its systems.<sup>394</sup> Finally, Ameritech has committed to measuring and reporting its performance for a number of OSS-related activities in order to demonstrate its compliance with the Act's nondiscrimination requirement.<sup>395</sup>

158. Nevertheless, we conclude that Ameritech has not proven by a preponderance of the evidence that, as of the filing of its application, it provides nondiscriminatory access to all OSS functions, as required by section 271 and section 251 of the Act. As noted above, Ameritech has the burden of demonstrating that it has met all of the requirements of section 271.<sup>396</sup> We find, on the basis of the record developed in this proceeding, that Ameritech has not met this burden. We first discuss the evidentiary showing on provision of OSS functions for unbundled network elements that we expect Ameritech to make in its next section 271 application. We then focus our discussion on Ameritech's OSS functions for the ordering and provisioning of resale services. Because competing carriers have used resale OSS functions more than the other OSS functions made available by Ameritech, the evidence in the record regarding the quality of access provided by Ameritech to the resale OSS functions is more fully developed. We are unable to find that the access Ameritech currently provides for resale services is equivalent to the access that it provides to itself in connection with its retail local exchange operations, nor are we sufficiently confident that the access it will provide in the future will be nondiscriminatory. Moreover, we conclude that the evidence strongly suggests that, at least with regard to the OSS functions for the ordering and provisioning of resale services, the quality of access that Ameritech is currently providing to competing carriers may decline as commercial usage increases. Utilizing the framework outlined in the preceding section, we conclude that, because Ameritech has failed to demonstrate that its OSS functions for the ordering and provisioning of resale services are operationally ready, Ameritech is unable to demonstrate that it is providing nondiscriminatory access to its OSS, as required by section 271(c)(2)(B)(xiv).

#### b. OSS Functions for Unbundled Network Elements

159. Although we focus our decision in this section on the OSS functions associated with the ordering and provisioning of resale services, we wish to make clear that, in future applications, Ameritech also must be able to demonstrate that it is providing nondiscriminatory access to OSS functions associated with unbundled network elements. As we noted above, a BOC must be able to demonstrate that the OSS functions that it has deployed adequately support each of the modes of entry envisioned by the Act.<sup>397</sup> Therefore,

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<sup>394</sup> *Id.*

<sup>395</sup> *See id.*

<sup>396</sup> *See supra* Section IV.A. (discussing the burden of proof on the applicant).

<sup>397</sup> *See supra* para. 133.

a BOC has not met its OSS obligation, under section 271 of the Act, until it demonstrates that its provision of OSS for unbundled network elements, as well as for resale, complies with the nondiscrimination requirement of the Act. We share the Department of Justice's concern about the paucity of Ameritech's showing on the issue of whether Ameritech's provision of OSS functions for unbundled network elements complies with the nondiscrimination duty required by the Act.<sup>398</sup>

160. As part of its duty to provide unbundled network elements to competing carriers, Ameritech must be able to provide to competing carriers individual network elements. Ameritech also must be able to provide combinations of network elements, including the combination of all network elements, which some parties refer to as the "UNE Platform" or the "Platform."<sup>399</sup> Deploying the necessary OSS functions that allow competing carriers to order network elements and combinations of network elements and receive the associated billing information is critical to provisioning those unbundled network elements. In Ameritech's application, Ameritech relies on internal testing as evidence that its OSS functions for the ordering, provisioning and billing of combinations of network elements are operationally ready.<sup>400</sup> During the pendency of its application, Ameritech began carrier-to-carrier testing of some, but not all, of these functions.<sup>401</sup> Currently, AT&T, as well as others, are testing the OSS functions for the ordering, provisioning, and billing of combinations of network elements with Ameritech.<sup>402</sup> There is no dispute in the record, however, regarding the lack of commercial usage of OSS functions associated with combinations of network elements.

161. As discussed above, we find that commercial usage is the most probative type of empirical evidence when considering whether a BOC has met its burden of demonstrating

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<sup>398</sup> As the Department of Justice notes, "Ameritech does not offer sufficiently detailed evidence, beyond the general discussion of internal testing in Kocher's affidavit, internal or other testing to demonstrate its ability to provide local switching alone or in combination with other elements." Department of Justice Evaluation, Appendix A at 21.

<sup>399</sup> See *infra* Section VI.F.4. Issues concerning the definition of the unbundled transport network element recently have been decided in the *Local Competition Third Reconsideration Order*.

<sup>400</sup> See Ameritech Application, Vol. 2.5, Kocher Aff. at 23-35.

<sup>401</sup> See Ameritech Reply Comments, Vol. 5R.12, Kocher Reply Aff. at 40-53.

<sup>402</sup> Ameritech represents in its reply comments that it is separately testing the combination of network elements with AT&T and MCI. *Id.* Because we give no weight to new evidence filed by Ameritech after the date of the application, we do not analyze the actual results of Ameritech's ongoing test with AT&T or the results of its test with MCI, both of which Ameritech discusses on reply. See *supra* Section IV.B.1.

compliance with this checklist item.<sup>403</sup> Absent data on commercial usage, we will examine carefully the results of carrier-to-carrier testing.<sup>404</sup> With regard to Ameritech's OSS functions for the ordering, provisioning and billing of combinations of network elements, we note that carrier-to-carrier testing began after the submission of Ameritech's application and even now has not yet been completed. Evidence in the record clearly indicates that a number of competing carriers, prior to the filing of Ameritech's application, sought to develop and test the necessary OSS functions to order, provision, and bill combinations of network elements.<sup>405</sup> Under such circumstances, we are unwilling to make a decision, based only on evidence relating to internal testing, regarding the readiness of Ameritech's OSS functions to support the provision of combinations of network elements. Given the demand by competing carriers to purchase combinations of network elements, we would expect to examine evidence other than mere internal testing results in any future section 271 application. We would expect Ameritech to demonstrate, at a minimum, that both individual and combinations of network elements can be ordered, provisioned, and billed in an efficient, accurate, and timely manner, and that its operations support systems supporting such functions are designed to accommodate both current demand and projected demand of competing carriers.<sup>406</sup>

**c. OSS Functions for the Ordering and Provisioning of Resale Services**

162. Competing carriers have primarily used Ameritech's OSS functions for the ordering and provisioning of resale services. Ameritech has deployed an interface utilizing an Electronic Data Interchange (EDI) protocol to receive resale service orders electronically from competing carriers.<sup>407</sup> In its application, Ameritech represents that, between January 1, 1997, and May 1, 1997, it received 19,671 resale orders electronically over the EDI interface, and

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<sup>403</sup> See *supra* para. 138.

<sup>404</sup> *Id.*

<sup>405</sup> See, e.g., AT&T Comments, Vol. III.E, Bryant Aff. at 17-28; MCI Comments, Exh. G, Sanborn Aff. at 13-14; Letter from Linda Oliver, Counsel for LCI International Telecom Corp., to William F. Caton, Acting Secretary, Federal Communications Commission (July 28, 1997).

<sup>406</sup> See *supra* Section VI.C.3.

<sup>407</sup> EDI has been adopted by the Alliance for Telecommunications Industry Solutions (ATIS) as the industry standard for the ordering and provisioning of resale services. See Transcript of Forum on Operations Support Systems for Unbundled Network Elements and Resale Services in Docket No. 96-98 (May 28-29, 1997), Ordering and Billing Forum Attachment, "Overview: Industry Guidelines for Operations Support Systems Functions."

that it accepted and processed 17,879 of those orders.<sup>408</sup> Since the beginning of the year, most of these orders have been placed by AT&T. The interface also is currently being used by MCI Metro, Network Recovery Services, and USN Communications.<sup>409</sup>

163. For the reasons set forth below, we conclude that Ameritech has failed to provide the type of data necessary to establish that it is providing nondiscriminatory access to OSS functions for the ordering and provisioning of resale services. Moreover, we conclude that Ameritech's reliance on manual processing for the ordering and provisioning of resale services has resulted in a number of problems with its OSS performance that preclude us from finding that Ameritech has met its burden of demonstrating compliance with this checklist item.

(1) Need to Provide Actual Installation Intervals

164. In order to demonstrate that it provides nondiscriminatory access to OSS functions for the ordering and provisioning of resale services, Ameritech provides empirical evidence in its application showing due dates not met and installations completed outside of a six-day interval, for both competing carriers and itself.<sup>410</sup> Ameritech contends that, in its experience as a local exchange carrier, it has determined that "when Ameritech performs well on these measures, its end user customers are satisfied."<sup>411</sup> Therefore, Ameritech claims that, because it measures those factors that have the most direct impact on the customer, its performance measurements are the most appropriate standards for demonstrating nondiscriminatory access, in the context of ordering and provisioning resale services.<sup>412</sup> Ameritech contends that its data measuring such performance demonstrate that Ameritech is providing nondiscriminatory access to OSS functions to competing carriers.

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<sup>408</sup> Ameritech Application, Vol. 21.3, Rogers Aff. at 21. Ameritech also notes in its reply comments that the number of resale orders received during the months of May and June increased to 79,300. Ameritech Reply Comments at 6. As noted above, we give no weight to new evidence submitted by Ameritech in its reply that is not directly responsive to evidence submitted by the commenting parties or that pertains to developments after May 21, 1997. *See supra* Section IV.B.1.

<sup>409</sup> Ameritech Application, Vol. 2.13, Rogers Aff. at 20.

<sup>410</sup> *Id.*, Vol. 2.10, Mickens Aff. at 15, 35. Ameritech also provides a number of other resale measurements including percentage of missed appointments, percentage of new service failures, percentage of repairs not completed within interval, percentage of initial trouble reports, percentage of outside plant failures, percentage of firm order confirmations not provided within interval, percentage of calls to service and repair centers not answered within interval, and speed of answer for operator services. *Id.* at 15-16.

<sup>411</sup> *Id.*, Vol. 2.10, Mickens Aff. at 16.

<sup>412</sup> *See id.*

165. Commenters generally contend that Ameritech's performance measurements for the ordering and provisioning of resale services do not demonstrate that Ameritech provides access to OSS functions on a nondiscriminatory basis.<sup>413</sup> To the contrary, commenters argue that the measurements chosen by Ameritech could easily mask discriminatory conduct.<sup>414</sup> In addition, both the Department of Justice and the Michigan Commission assert that performance measurements tracking average intervals are necessary to make a finding that Ameritech is providing nondiscriminatory access to OSS functions.<sup>415</sup> Specifically, the Michigan Commission notes that "[m]easurements must permit determinations of parity to be made with Ameritech's own retail operations. Measuring rates of completion within a target period of time rather than determining actual average time to complete a task does not permit direct comparisons to Ameritech's retail performances."<sup>416</sup>

166. Because the ordering and provisioning of resale services is analogous to the ordering and provisioning of Ameritech's retail services, we find that Ameritech must provide to competing carriers access to such OSS functions equal to the access that it provides to its retail operations. In our view, the performance data submitted by Ameritech fail to demonstrate that Ameritech is providing such equivalent access. Most significantly, Ameritech does not measure and report average installation intervals for Ameritech's retail operations or for competing carriers. We conclude that Ameritech's failure to submit such evidence prevents the Commission from making a decision based on this factual record, and provides Ameritech with an ability to mask discriminatory behavior. Because Ameritech only tracks installations completed outside of a six-day interval, rather than average installation intervals, the Department of Justice notes that, "if 100 percent of Ameritech's retail customers receive service on day one, while 100 percent of the CLEC's customers do not receive their service until day five, then a report of installations outside of six days will show parity of performance, not revealing the discriminatory difference in performance between Ameritech and the CLEC."<sup>417</sup> We conclude, therefore, that in order to demonstrate nondiscriminatory access to OSS functions, Ameritech must demonstrate that it is provisioning resale orders within the same average installation interval as that achieved by its retail operations.

167. As the Department of Justice notes, "[p]roviding resale services in substantially the same time as analogous retail services is probably the most fundamental parity

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<sup>413</sup> AT&T Comments, Vol. III.Q, Pfau Aff. at 14.

<sup>414</sup> *Id.*, Vol. III.Q, Pfau Aff. at 11-13.

<sup>415</sup> Department of Justice Evaluation, Appendix A at 24-26; Michigan Commission Consultation at 31.

<sup>416</sup> Michigan Commission Consultation at 31.

<sup>417</sup> Department of Justice Evaluation, Appendix A at 25.

requirement in Section 251."<sup>418</sup> If Ameritech is, to a significant extent, processing retail orders for itself more quickly than it is processing resale orders for competitive carriers, Ameritech would not be meeting its obligation to provide equivalent access to those OSS functions. Without data on average installation intervals comparing Ameritech's retail performance with the performance provided to competing carriers, the Commission is unable to conclude that Ameritech is providing nondiscriminatory access to OSS functions for the ordering and provisioning of resale.

168. The average installation interval is a critical measurement in determining whether nondiscriminatory access to these OSS functions has been provided to competing carriers. Ameritech has not provided such evidence in this record. While Ameritech's argument that customers are most concerned about due dates missed and installations completed outside of one week may apply in a single-supplier market, it is likely, in a competitive marketplace, that customer decisions increasingly will be influenced by which carrier is able to offer them service most swiftly. While we acknowledge that due dates missed and installations completed outside of one week may supply useful information regarding the quality of access that Ameritech is providing to competing carriers, such measurements do not, in and of themselves, demonstrate that Ameritech is providing equivalent access to OSS functions.

169. We also fundamentally disagree with Ameritech's position that measuring average installation intervals for both competitive carriers and Ameritech's retail operations is meaningless as a measurement of nondiscriminatory access because the circumstances and business objectives of each carrier are different.<sup>419</sup> Ameritech argues that, because some customers may not choose the first available installation date, and Ameritech cannot independently determine which customers served by competing carriers request dates other than the first available, average installation intervals may differ between carriers, depending upon the number of customers who choose due dates beyond the first available.<sup>420</sup> Ameritech also contends that, because orders may vary in level of complexity, average installation intervals can be further skewed, depending upon the different types of orders received by particular carriers.<sup>421</sup>

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<sup>418</sup> *Id.*, Appendix A at 12.

<sup>419</sup> Ameritech commits, however, to participate in any reasonable audit process to ensure that it is offering the same due dates to other carriers. Ameritech Application, Vol. 2.10, Mickens Aff. at 21.

<sup>420</sup> *Id.*, Vol. 2.10, Mickens Aff. at 20. Ameritech further argues that it is unrealistic for it to try to exclude those orders that do not use the first available due date, because Ameritech cannot determine after the fact whether the due date submitted by the competing carrier was actually the first available at the time of the order. Ameritech Reply Comments, Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 18.

<sup>421</sup> Ameritech Application, Vol. 2.10, Mickens Aff. at 20-21.

170. We believe Ameritech's arguments disputing the probative value of data measuring average installation intervals should be made in conjunction with the filing of such data in its application, rather than as a justification for not filing such data at all. In order for the Commission to determine if Ameritech's arguments have some validity, we must first be able to examine data that measure average installation intervals. As noted by the Department of Justice, Ameritech can and should exclude from its data those customers who requested due dates beyond the first available due date.<sup>422</sup> In addition, Ameritech can and should disaggregate its data to account for the impact different types of services may have on the average installation interval.<sup>423</sup> Moreover, Ameritech is free to use data on due dates not met to explain any inconsistencies between the average installation intervals for itself and other carriers.<sup>424</sup> For example, if a particular competing carrier consistently requests a standard, longer interval for completion of all of its orders, rather than the first available installation date, such data may explain that any differences in the average installation intervals between Ameritech and the other carrier are not due to discriminatory conduct on the part of Ameritech. Finally, we recognize that Ameritech is willing to audit, upon request, the due dates offered to its retail units and to competing carriers to determine whether such dates are offered on a nondiscriminatory basis.<sup>425</sup> We agree with the Department of Justice that a commitment to conduct an audit in the future does not constitute evidence of current nondiscriminatory treatment.<sup>426</sup> In addition, although an audit may provide useful information, Ameritech has not fully explained the parameters of such an audit for us to conclude that its audit proposal would provide an adequate substitute for measuring actual installation intervals.<sup>427</sup>

171. In sum, we find that submission of data showing average installation intervals is fundamental to demonstrating that Ameritech is providing nondiscriminatory access to OSS functions. Such data is direct evidence of whether it takes the same time to complete installations for competing carriers as it does for Ameritech, which is integral to the concept

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<sup>422</sup> Department of Justice Evaluation, Appendix A at 25; *see also* Michigan Commission Consultation at 31-32.

<sup>423</sup> *See* Michigan Commission Consultation at 31-32.

<sup>424</sup> We note that it appears that Ameritech is already tracking the due dates requested by competing carriers. Ameritech currently is able to report the number of due dates it changes because the requested date has already passed or the requested date falls on a weekend or a holiday. *See* Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Reasons for Changed Due Dates").

<sup>425</sup> *See* Ameritech Application, Vol. 2.10, Mickens Aff. at 21; Ameritech Reply Comments, Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 19-20.

<sup>426</sup> *See* Department of Justice Evaluation, Appendix A at 26.

<sup>427</sup> *See id.*



of equivalent access. By failing to provide such data in this application, Ameritech has failed to meet its evidentiary burden. We conclude that, if Ameritech chooses to resubmit its application for Michigan, Ameritech should submit data measuring the average installation intervals for its retail operations and competing carriers so that the Commission may determine whether Ameritech is providing nondiscriminatory access to OSS functions for the ordering and provisioning of resale services.<sup>428</sup>

## (2) Reliance on Manual Processing

172. We further conclude that Ameritech has failed to demonstrate it is providing nondiscriminatory access to its OSS functions because there is convincing evidence in the record indicating that Ameritech's OSS functions for the ordering and provisioning of resale services may contain serious system deficiencies that will likely magnify as the volume of commercial use increases. In particular, commenters argue that there is a direct correlation between Ameritech's reliance on manual processing and both Ameritech's inability to return a significant number of firm order confirmations (FOCs) and order rejections on time,<sup>429</sup> as well as Ameritech's modification of a significant number of due dates.<sup>430</sup> Commenters contend that experience has shown that, as the number of resale orders increases, more orders will be processed manually and, as a result, more orders will be backlogged, remain pending, or processed more slowly than Ameritech's own orders.<sup>431</sup>

173. As discussed more fully below, we find that Ameritech's reliance on manual processing is substantial and appears to cause a significant deterioration in Ameritech's

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<sup>428</sup> We note that, in conjunction with its merger application, Bell Atlantic and NYNEX have committed to providing performance data measuring average installation intervals. See Letter from G. R. Evans, Vice President, Federal Regulatory Affairs, NYNEX, to William F. Caton, Acting Secretary, Federal Communications Commission, at Attachment (July 21, 1997). We adopted this commitment, among others, as a condition for approval of the merger. See *In the Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, at Appendix D (rel. Aug. 14, 1997).

<sup>429</sup> A FOC informs a competing carrier that an order has been accepted by Ameritech and confirms the due date for completion. An order rejection notice alerts a competing carrier that it must make changes or edits to the order before it can be processed by the interface.

<sup>430</sup> AT&T Comments, Vol. III.E, Bryant Aff. at 43-50. AT&T also notes that a staff member of the Wisconsin Public Service Commission recently testified that there is direct causal relationship between manual review and missed due dates. *Id.*, Vol. III.F, Connolly Aff. at 66-67 (citing Direct Testimony of Anne Wiecki in Wisconsin Public Service Commission Docket 6720-TI-120 at 8-9 (March 18, 1997)).

<sup>431</sup> AT&T Comments at 24, Vol. III.E, Bryant Aff. at 73, and Vol. III.F, Connolly Aff. at 67-68, 80.

performance as orders increase.<sup>432</sup> Given that the problems currently faced by Ameritech generally have arisen from a limited number of orders for simple POTS resale service,<sup>433</sup> we are concerned that the problems Ameritech is experiencing will multiply, as more competing carriers enter the marketplace and increase both the total number of orders and the number of orders involving more complex services. We identify and discuss below the major problems that have been, at least partially, caused by Ameritech's reliance on manual processing for the ordering and provisioning of resale services.

**(a) Orders in "1PE" Status and Split Accounts**

174. Evidence in the record indicates that Ameritech processes manually a significant number of the orders that it receives over its EDI interface.<sup>434</sup> For example, Ameritech's own data indicate that, from January through April of this year, approximately 39 percent of the resale orders received electronically over the EDI interface were processed manually before the orders entered Ameritech's legacy systems.<sup>435</sup> The rest of the orders were either rejected electronically by the interface or were processed electronically into the legacy systems.

175. Ameritech represents that the most significant number of orders processed manually are orders that the interface accepts, but that could not be processed into the legacy systems without additional changes or edits being made to the orders, known as orders in

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<sup>432</sup> For purposes of this discussion, we focus on manual intervention that Ameritech uses to process orders received from competing carriers from the EDI interface into the legacy systems. *See supra* para. 134. Because "Ameritech enters orders directly into the legacy systems," its orders do not require similar processing from an interface to its legacy systems. *See Ameritech Reply Comments*, Vol. 5R.24, Rogers Reply Aff. at 21; *see also Ameritech Application*, Vol. 2.13, Rogers Aff. at 22-23.

<sup>433</sup> The term "POTS" or "plain old telephone service" refers to the most basic types of telecommunications services offered by local exchange carriers to their customers.

<sup>434</sup> AT&T Comments, Vol. III.F, Connolly Aff. at 8-9; MCI Comments at 21, Exh. D, King Aff. at 34; TRA Comments at 29-30.

<sup>435</sup> Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 13-14. In its application, Ameritech presented evidence that shows that, during the period from January 1, 1997 to May 1, 1997, of the 19,671 orders received electronically over the EDI interface, 8,901 were processed with manual review. Ameritech Application, Vol. 2.13, Rogers Aff. at 21. In its reply comments, Ameritech notes that, for the months of May and June, the level of manual review decreased to approximately 29 percent of all orders placed over the EDI interface. Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 13-14. We find, at a minimum, that the data measuring Ameritech's June performance are new data that are not directly responsive to any factual assertions made by commenters, and we therefore will not consider such evidence. If we were to consider such evidence, however, we would find that manually processing close to one-third of the resale orders placed over an electronic interface is still significant, in light of the problems associated with manual processing, discussed below.

"1PE" (or "1P") status.<sup>436</sup> Ameritech explains that, "'1PE' status occurs because Ameritech's service order processing system edits determine that manual review is required on an order that the interface thought could be processed electronically."<sup>437</sup> In addition, Ameritech manually processes all orders involving split accounts (namely, when resellers provide service to some, but not all, of a customer's lines) that are received over the electronic interface.<sup>438</sup> Of the total number of resale orders that are received electronically over the EDI interface, approximately 9 percent are reviewed manually because they involve split accounts.<sup>439</sup> Ameritech acknowledges that a competing carrier has little control over whether an order will require manual review, and that the manual processing of orders placed in "1PE" status and orders involving split accounts results solely from decisions made by Ameritech.<sup>440</sup> Ameritech's own data indicate that orders in "1PE" status and orders involving split accounts together constitute over 60 percent of the total number of AT&T orders requiring manual review.<sup>441</sup>

176. Ameritech contends that, in general, whether orders are processed electronically or manually is not relevant to determining operational readiness in compliance with the competitive checklist.<sup>442</sup> Ameritech also claims, however, that the problems associated with "1PE" status are not confined to competing carriers, but also affect Ameritech's retail

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<sup>436</sup> During the months of April and May, Ameritech received 45,851 orders from AT&T, of which 11,499 were manually reviewed. Of those orders, 4,620 were manually processed because of "1PE" status. Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Manual Review - April and May"). See *id.*, Vol. 5R.24, Rogers Reply Aff. at 27 ("1Ps accounted for approximately 39% of manual reviews during April 1997").

<sup>437</sup> Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 16.

<sup>438</sup> A split account "occurs when a reseller obtains some, but not all, of a customer's telephone lines, while the balance remains with the original carrier." *Id.*, 5R.7, Gates and Thomas Reply Aff. at 17.

<sup>439</sup> *Id.*, Vol. 5R.7, Gates and Thomas Reply Aff. at 17, Exhibit 8 ("Manual Review - April and May").

<sup>440</sup> Ameritech's own performance measures indicate that other than those orders that contain an entry in the "Remarks" field, competing carriers have no control over the necessity for manual review. *Id.*, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Manual Review - April and May").

<sup>441</sup> *Id.*, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Manual Review - April and May"). Ameritech indicates that there are several additional reasons for manual processing of orders received from competing carriers. See *id.* at 18; Ameritech Application, Vol. 2.13, Rogers Aff. at 25-31.

<sup>442</sup> Ameritech Application, Vol. 2.13, Rogers Aff. at 23 ("Ameritech's manual processing of certain orders, after they are received through the appropriate electronic interface, has absolutely no bearing on compliance with the checklist and the Commission's First Report and Order and Second Order on Reconsideration in CC Docket 96-98. . . . The checklist and the Commission's pronouncements do not address how Ameritech processes transactions internally after the transaction over the interface with the CLEC is complete.").

operations.<sup>443</sup> Ameritech asserts that the corrections made to orders during manual review are generally "simple and quick" and made in the same time it takes to make similar adjustments to retail orders.<sup>444</sup> Ameritech also argues that, when orders have fallen into "1PE" status in sufficient volume, Ameritech has added an additional edit to its interface to resolve the problem electronically.<sup>445</sup> In addition, Ameritech contends that its decision whether to mechanize certain functions, such as processing orders involving split accounts, is a business decision made solely by Ameritech.<sup>446</sup>

177. Commenters argue that Ameritech's reliance on manual processing of a significant number of resale orders is directly relevant to determining whether Ameritech is able to demonstrate that it is providing nondiscriminatory access to OSS functions.<sup>447</sup> Commenters contend that manual processing consistently has been the cause of undue delays in order processing and order completions.<sup>448</sup> Commenters explain that such delays have a direct impact on their ability to serve their customers.<sup>449</sup>

178. Although it may be true, as Ameritech suggests, that the corrections made to "1PE" orders are generally "simple and quick" and made in the same time it takes to make similar adjustments to retail orders, this statement does not account for the time that elapses between the identification of the problem at the interface and the resolution of the problem through manual intervention. Evidence in the record indicates that the time that elapses until a particular order is eventually reviewed and processed manually into the legacy systems may be, and has been, significant, depending on the number of existing orders that are pending or

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<sup>443</sup> Ameritech Reply Comments, Vol. 5R.24, Rogers Reply Aff. at 20. Ameritech represents that, although "retail orders do not fall into 1P[E] status because the same adjustments to orders which occur during 1P status for CLEC orders are made to retail orders during the order entry process," "the same flaws that cause CLEC orders to drop into IP[E] status prevent retail orders from being entered at all." *Id.*

<sup>444</sup> *Id.*, Vol. 5R.24, Rogers Reply Aff. at 20.

<sup>445</sup> *Id.*, Vol. 5R.7, Gates and Thomas Reply Aff. at 16-17 (Ameritech states that it has added fifteen such edits in "recent months").

<sup>446</sup> *Id.*, Vol. 5R.7, Gates and Thomas Reply Aff. at 17-18. Gates and Thomas also note that "Ameritech has informed us that it is currently in the process of developing additional software upgrades, with a scheduled implementation date of September 1997, which will allow more transactions to be processed electronically." *Id.* As discussed above, we do not find probative any new commitments made by Ameritech in its reply comments.

<sup>447</sup> AT&T Comments, Vol. III.F, Connolly Aff. at 55.

<sup>448</sup> *Id.*, Vol. III.E, Bryant Aff. at 43-50; CWA Reply Comments at 10.

<sup>449</sup> AT&T Comments, Vol. III.E, Bryant Aff. at 71-73; MCI Comments at 21.

backlogged and the resources Ameritech has allocated to manual processing.<sup>450</sup> As a consequence, the time it takes to process manual orders is generally much longer than the time it takes to process an equivalent Ameritech retail order. Although there may be limited instances in which it is appropriate for Ameritech to intervene manually in the processing stage so that orders are processed correctly into the legacy systems, excessive reliance on this type of manual processing, especially for routine transactions, impedes Ameritech's ability to provide equivalent access to these fundamental OSS functions. Because competing carriers have no control over whether their orders will be put into "1PE" status,<sup>451</sup> we would generally expect that the percentage of orders placed in "1PE" status for competing carriers should be equivalent or close to the percentage of orders rejected by the legacy systems for Ameritech's retail operations, although we recognize that Ameritech is not responsible for errors made by competing carriers.

179. In addition, in light of the fact that orders for split accounts have consistently constituted close to 10 percent of the total resale orders, we question Ameritech's continued reliance on manual processing for these types of orders. Although we recognize that Ameritech has committed to implementing a mechanized solution, this commitment was first made by Ameritech in its reply comments.<sup>452</sup> As discussed above, we will not consider commitments regarding future actions, particularly those made on reply, to demonstrate current compliance with the checklist requirements. If Ameritech chooses to resubmit its application for Michigan, we would expect to see evidence demonstrating that it has carried out this commitment.

180. We are not persuaded by Ameritech's argument that whether orders are processed electronically or manually is not relevant to our determination of whether Ameritech is providing nondiscriminatory access to OSS functions, given that there appears to be a direct correlation between manual processing and the time it takes Ameritech to process and provision orders for resale. While we understand that Ameritech undertakes a cost-benefit approach to determine when to mechanize order processing, it appears that Ameritech's analysis does not adequately account for the potential impact manual processing has on competing carriers.<sup>453</sup> We agree with the Department of Justice that "manual

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<sup>450</sup> For a more detailed discussion of the delays Ameritech has experienced in processing orders, see *infra* Sections VI.C.S.c.(2).(c) and (d); see also AT&T Comments, Vol. III.E, Bryant Aff. at 44-50. See generally Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8.

<sup>451</sup> See *supra* note 440.

<sup>452</sup> See Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 17-18.

<sup>453</sup> Ameritech essentially weighs the costs and benefits of rewriting its software versus the costs and benefits of using service representatives to do manual processing. Ameritech Application, Vol. 2.13, Rogers Aff. at 24, 31-32.

processing that results in the practicable unavailability of services or elements at foreseeable demand levels can impede the development of competition, and thus obviously has a direct bearing on compliance with the competitive checklist and the Commission's rules."<sup>454</sup>

**(b) Modified Due Dates**

181. In addition to the problems with orders in "1PE" status and orders involving split accounts, we find that Ameritech's reliance on manual processing has caused Ameritech to modify, in a significant number of instances, the due dates for order completions requested by competing carriers placing orders over the EDI interface.<sup>455</sup> The record indicates that, as a result of resource issues, many orders that fall out to manual processing remain pending past the requested due date for order completion. As a result, Ameritech must then modify the due dates for those orders. We also note that Ameritech's data tracking "due dates met" appear to hide the full impact of Ameritech's modification of due dates on competing carriers because Ameritech considers meeting modified due dates as due dates met.<sup>456</sup>

182. In response to commenters' criticism regarding changed due dates,<sup>457</sup> Ameritech contends that it modifies due dates for the following types of orders: (1) those specifying a due date that has already passed at the time of submission; (2) those processed after 3 p.m. but requesting completion the same day; (3) those specifying a due date that falls on a weekend or holiday; (4) those dependent upon "force and load" levels because they require the dispatch of engineering personnel;<sup>458</sup> and (5) those that cannot be completed by the requested due date because of Ameritech service center resource issues.<sup>459</sup> Ameritech represents that competing carriers have access to the same due dates available to Ameritech retail representatives through the pre-ordering interface. Ameritech claims that these dates are distributed on a first-come-first-served basis and, therefore, if more carriers made use of the

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<sup>454</sup> Department of Justice Evaluation, Appendix A at 2-3.

<sup>455</sup> Ameritech itself admits that one reason that due dates are modified is because of service center resource issues. Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 23.

<sup>456</sup> Under the Department of Justice's extrapolation of various performance measurements, "[i]f Ameritech-changed due dates are discounted, Ameritech met due dates *requested by AT&T* roughly 76% of the time in April." Department of Justice Evaluation, Appendix A at 14.

<sup>457</sup> See AT&T Comments at 25, Vol. III.E, Bryant Aff. at 87; CWA Reply Comments at 13-14.

<sup>458</sup> "Force and load" levels refer to the work force that is available given the current volume of work.

<sup>459</sup> Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at 23; *see also* Ameritech Application, Vol. 2.10, Mickens Aff. at 43-44.

pre-ordering interface for obtaining due dates, Ameritech's need to modify due dates would diminish.<sup>460</sup>

183. The evidence shows that Ameritech's need to modify due dates because of Ameritech resource issues is directly related to Ameritech's extensive reliance on manual review to process orders. Ameritech's own data show that the most prevalent cause of due date modification has been the lack of adequate resources available to process the orders by the original due date when the orders have fallen out to manual processing. Ameritech itself admits that the original due dates requested for these orders were valid at the time the orders were placed, but had to be changed when the orders were ultimately processed because, by that time the original due date had already passed.<sup>461</sup> From the week of March 31, 1997 through the week of May 26, 1997, the percentage of AT&T orders requiring due date modifications ranged from 7 percent to 61 percent of the total AT&T orders received each week.<sup>462</sup> Of those orders requiring modified due dates, the percentage modified due to a lack of Ameritech resources ranged from 17.1 percent to 69.3 percent per week.<sup>463</sup> We believe that the need to modify due dates is symptomatic of a Ameritech's broader inability to process a significant number of orders from competing carriers without continual delays.<sup>464</sup>

184. We also find that the record does not support Ameritech's claim that increased usage of the pre-ordering interface by competing carriers would significantly reduce the number of modified due dates.<sup>465</sup> If provisioning an order does not require a field visit, there

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<sup>460</sup> Ameritech represents that its pre-ordering interface includes a due date selection subfunction that allows competing carriers to reserve due dates for those service orders that require a field visit. Ameritech Application, Vol. 2.13, Rogers Aff. at 13. See also Ameritech Reply Comments, Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 29.

<sup>461</sup> Ameritech Application, Vol. 2.10, Mickens Aff. at 43-44.

<sup>462</sup> Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Changed Due Dates") (3/31 - 46%; 4/7 - 15%; 4/14 - 32%; 4/21 - 7%; 4/28 - 22%; 5/5 - 37%; 5/12 - 16%; 5/19 - 61%; 5/26 - 48%).

<sup>463</sup> *Id.*, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Reasons for Changed Due Dates") (3/31 - 29.9%; 4/7 - 17.4%; 4/14 - 37.2%; 4/21 - 57.5%; 4/28 - 68.9%; 5/5 - 60.3%; 5/12 - 49.8%; 5/19 - 65.5%; 5/26 - 69.3%). See also CWA Reply Comments at 10-14 (CWA's discussion of reasons for backlogged orders).

<sup>464</sup> See, e.g. AT&T Comments, Vol. III.E, Bryant Aff. at 36 ("AT&T's service orders continue to be mistakenly rejected despite the fact that they are fully consistent with Ameritech's ordering specifications"). Ameritech changed only 10.3% of the due dates for competing carrier orders that it processed electronically, but 42.4% of the due dates for orders that it received electronically and processed manually. *Id.* at 47.

<sup>465</sup> See also Ameritech Reply Comments, Vol. 5R.16, Mayer, Mickens, and Rogers Reply Aff. at 19-20 (Ameritech commits to participating in a reasonable audit to determine whether competing carriers have equal access to available due dates in order to demonstrate that competing carriers are receiving "parity of treatment"

is no need for a competing carrier to use the pre-ordering interface to reserve a due date.<sup>466</sup> Ameritech does not dispute that the vast majority of resale orders placed by AT&T have not required a field visit. Yet, Ameritech has continually modified the due dates for a significant percentage of the resale orders placed by AT&T.<sup>467</sup> As a result, increased usage of the pre-ordering interface would have little impact on the number of AT&T orders that currently are being processed manually. We acknowledge that, in general, it may be necessary for Ameritech to modify due dates when the dates requested by competing carriers are for some reason invalid, such as when the date requested has already passed, or when the order requires the dispatch of engineering personnel so that the requested due date cannot be met. In addition, while it may be appropriate to modify due dates because of a lack of resources in certain limited circumstances,<sup>468</sup> we believe that a continual, consistent trend of significant due date modification for this reason calls into question whether Ameritech is providing nondiscriminatory access to its OSS functions.

185. While Ameritech's recurring need to modify due dates, in and of itself, causes us great concern, the modification of due dates only reinforces our view that Ameritech should measure average installation intervals for the ordering and provisioning of resale services, as discussed above.<sup>469</sup> Because Ameritech largely controls both the availability of due dates and the use of manual review to process orders for resale services, we must be persuaded by a preponderance of the evidence that it is not engaging in discriminatory behavior when, as Ameritech admits, there is a direct correlation between these two activities.<sup>470</sup> Ameritech's argument that average installation intervals are not relevant as a measurement of parity is hardly persuasive, given that Ameritech is modifying a large number of due dates because of a lack of Ameritech resources. In this context, it is especially important for Ameritech to measure average installation intervals because evidence of how

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with regard to installations.).

<sup>466</sup> See *supra* note 460.

<sup>467</sup> See Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Exhibit 8 ("Changed Due Dates").

<sup>468</sup> For example, there may be an instance where the number of orders received by Ameritech is beyond the capacity limits of its systems because actual demand has exceeded projected demand. As long as Ameritech had made a reasonable attempt to project levels of demand, its use of manual processing in this instance may be warranted.

<sup>469</sup> See *supra* Section VI.C.5.c.(1).

<sup>470</sup> Ameritech Reply Comments, Vol. 5R.7, Gates and Thomas Reply Aff. at Schedule 8 ("Reasons for Changed Due Dates").



due date modification is affecting average installation intervals would be relevant to the question of whether Ameritech is providing equivalent access to OSS functions.<sup>471</sup>

**(c) Untimely Firm Order Confirmation Notices  
and Order Rejection Notices**

186. The record indicates that Ameritech's reliance on manual processing has affected its ability to deliver in a timely fashion a significant number of firm order confirmation notices and order rejection notices.<sup>472</sup> A firm order confirmation is sent by Ameritech to competing carriers over the EDI interface when an order has been entered into Ameritech's legacy systems.<sup>473</sup> An order rejection notice is sent by Ameritech to competing carriers over the EDI interface when an order has been rejected by Ameritech via the interface or by Ameritech personnel. FOCs and order rejection notices allow competing carriers to monitor the status of their resale orders and to track the orders for both their customers and their own records.<sup>474</sup> As the Department of Justice notes,

Orders that flow through electronically, and do not require manual review, trigger an almost immediate FOC or rejection. Because an order cannot be completed prior to its entry into Ameritech's systems, and the wait for a FOC or rejection indicates the time required for such entry, the time it takes to return FOCs or rejections is an indication of the absolute minimum time Ameritech would have required to complete the order. In addition, beyond their use as barometers of performance, FOC and rejection notices play a critical role in a CLEC's ability to keep its customer apprised of installation dates (or changing thereof) and modify a customer's order prior to installation.<sup>475</sup>

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<sup>471</sup> Average interval information would provide context to existing information regarding due dates met and the number of due dates modified. See discussion regarding need for average installation intervals *supra* Section VI.C.5.c.(1) *supra*.

<sup>472</sup> See, e.g., AT&T Comments, Vol. III.E, Bryant Aff. at 57-58; MCI Comments, Exh. D, King Aff. at 60-61.

<sup>473</sup> Ameritech has testified that the EDI "855 transaction" it uses to provide a FOC to a competing carrier should be generated by Ameritech's interface within minutes of receipt of a valid order. See AT&T Comments, Vol. III.E, Bryant Aff. at 55, Attachment 16 (quoting testimony of Joe Rogers in Illinois Commerce Commission Section 271 hearing). Ameritech designates a FOC as an "855."

<sup>474</sup> AT&T Comments, Vol. III.E, Bryant Aff. at 54.

<sup>475</sup> Department of Justice Evaluation, Appendix A at 17.